

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DALEEN D. WEIGHT,
Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of
Social Security,
Defendant.

CASE NO. C06-5081RBL

REPORT AND
RECOMMENDATION

Noted for May 5, 2006

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter is before the undersigned on defendant's motion to dismiss for lack of subject matter jurisdiction and failure to exhaust administrative remedies. After reviewing defendant's motion, plaintiff's response thereto and the remaining record, the undersigned submits the following report and recommendation for the Honorable Ronald B. Leighton's review.

DISCUSSION

Plaintiff filed a complaint with this Court on February 9, 2006, seeking review of the denial of her

1 application for social security disability insurance benefits. (Dkt. #1-#3). On March 21, 2006, defendant
2 filed a motion to dismiss that complaint on the basis that this Court lacks subject matter jurisdiction over
3 this case due to plaintiff's failure to exhaust her administrative remedies. Specifically, defendant argues that
4 because the Commissioner did not issue a "final" decision in this matter, judicial review of the denial of
5 plaintiff's application is unavailable.

6 In this case, although plaintiff requested a hearing after her application was denied initially and on
7 reconsideration, she failed to appear at her scheduled hearing and her request for a hearing was dismissed.
8 See Declaration of Paul D. Gould and Exhibits 1-4, attached to Plaintiff's Motion to Dismiss. Plaintiff filed
9 a request for review of that dismissal, which was denied by the Appeals Council. Id. at Exhibit's 5-6.
10 Judicial review of the Commissioner's administrative decisions is governed by Section 405(g) of the Social
11 Security Act, which reads in relevant part:

12 Any individual, after any final decision of the Commissioner of Social Security made
13 after a hearing to which he was a party, irrespective of the amount in controversy, may
14 obtain a review of such decision by a civil action commenced within sixty days after the
mailing to him of notice of such decision or within such further time as the Secretary
may allow.

15 42 U.S.C. § 405(g); see also Udd v. Massanari, 245 F.3d 1096, 1098 (9th Cir. 2001) (judicial review limited
16 to final decision made after hearing).

17 Accordingly, because it appears the ALJ did not issue a final decision in this matter, judicial review
18 of the denial of plaintiff's disability insurance benefits application is unavailable. Indeed, plaintiff does not
19 object to the Court's dismissal of this action. See Plaintiff's Response to Defendant's Motion to Dismiss
20 (Dkt. #10). In light of the above, the undersigned recommends dismissal of this case.


21 CONCLUSION

22 Based on the foregoing discussion, the court should GRANT defendant's motion to dismiss, and
23 dismiss this action.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
25 the parties shall have ten (10) days from service of this Report and Recommendation to file written
26 objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
27 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
28 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 5, 2006**, as

1 noted in the caption.

2 DATED this 13th day of April, 2006.

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6 Karen L. Strombom
7 United States Magistrate Judge
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